

APPEAL, CLOSED

**U.S. District Court
Southern District of Texas (Brownsville)
CIVIL DOCKET FOR CASE #: 1:02-cv-00154
Internal Use Only**

Garza v. U S A
Assigned to: Judge Hilda G Tagle
Demand: \$0
Case in other court:
Cause: 28:2671 Federal Tort Claims Act

Date Filed: 08/12/2002
Jury Demand: None
Nature of Suit: 890 Other
Statutory Actions
Jurisdiction: U.S. Government
Defendant

Petitioner

Luis Alejandro Garza


represented by **Barry Robert Benton**
Attorney at Law
284 Ebony Ave
Brownsville, TX 78520
956-546-9900
Fax: 956-546-9997 fax
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

U S A

represented by **Nancy Lynn Masso**
Office of U S Attorney
600 E Harrison
Ste 201
Brownsville, TX 78520
956-548-2554
Fax: 956-548-2549 fax
Email: nancy.mass@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

TRUE COPY I CERTIFY
ATTEST:
MICHAEL N. MILBY, CLERK
By 
Deputy Clerk

Date Filed	#	Docket Text
07/26/2002	<u>1</u>	COMPLAINT by Luis Alejandro Garza filed; FILING FEE \$

		not paid (ogutierrez) (Entered: 07/29/2002)
07/26/2002	<u>2</u>	Affidavit of inability to pay costs by Luis Alejandro Garza, Motion Docket Date 8/15/02 [2-1] motion , filed. (ogutierrez) (Entered: 07/29/2002)
08/12/2002	<u>3</u>	ORDER granting [2-1] motion of inability to pay costs , entered; It is Further Ordered that Clerk issue summons and the US Marshal serve a copy of the complaint, summons and this order upon dfts as directed by pltf. All costs of service shall be advanced by the US. Parties notified. (signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 08/12/2002)
08/12/2002		As per Mr. Benton's Secretary Patty, they will issue summons. (ogutierrez) (Entered: 08/12/2002)
08/12/2002		Miscellaneous Case # B-02-18 transferred to civil docket. Case assigned to Judge Hilda G. Tagle (ogutierrez) (Entered: 08/12/2002)
08/12/2002		CASE REFERRED to Magistrate Judge Felix Recio (ogutierrez) (Entered: 08/12/2002)
08/12/2002		SUMMONS issued for U S A and hand delivered to Atty Benton's Secretary. They will be sending them by Certified mail. (ogutierrez) (Entered: 08/12/2002)
10/16/2002	<u>4</u>	Notice of Dismissal for Lack of Prosecution , entered; Parties notified. (signed by Magistrate Judge Felix Recio) It is ordered that this 28:2671 Complaint be placed on the dismissal docket for lack of prosecution and dismissed thereafter if no response is received from Pltf by 11/29/02. (ogutierrez) (Entered: 10/17/2002)
10/28/2002	<u>5</u>	ANSWER to Complaint by U S A (Added attorney), filed. (ogutierrez) (Entered: 10/28/2002)
11/13/2002	<u>6</u>	RESPONSE by Luis Alejandro Garza to [4-1] notice of dismissal , filed. (ogutierrez) (Entered: 11/22/2002)
12/04/2002	<u>7</u>	ORDER setting Initial pretrial conference for 2:00 1/7/03 before Magistrate Judge Felix Recio , entered; Parties notified. signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 12/04/2002)
01/07/2003	<u>8</u>	Minute entry: Scheduling conference held b/Judge Recio. Apps: Barry Benton f/pltf; Nancy Masso f/dft. The parties

		were informed that this Court would request Judge Tagle to transfer this cause of action to the Corpus Christi Division for judicial resource conservation. (ogutierrez) (Entered: 01/08/2003)
01/10/2003	<u>9</u>	ORDER set scheduling conference for 2:00 1/16/03 before Magistrate Judge Felix Recio , entered; Parties notified. (FR) (ogutierrez) (Entered: 01/13/2003)
01/16/2003	<u>10</u>	Minute entry: Scheduling Conference held b/Judge Recio. Apps: Barry Benton and Nancy Masso. The parties agreed to the docket dates. A scheduling order will be issued . (ogutierrez) (Entered: 01/17/2003)
01/16/2003	<u>11</u>	ORDER set scheduling order deadlines: joining of parties, amended pleadings 4/14/03 ; Pltf Expert witness list submitted by 4/24/03, Dft expers by 5/16/03 ; Discovery cutoff 7/1/03 ; Deadline for filing all dispositive motions 8/4/03 ; Pretrial order to be submitted on or before 9/15/03 ; Docket call and final pretrial conference b/Judge Tagle set for 1:30 pm on 10/2/03; Jury Selection b/Judge Tagle on 10/6/03 at 9am. before Magistrate Judge Felix Recio ETT: 5 days; , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 01/17/2003)
01/16/2003		Deadline updated; set docket call for 1:30 10/2/03 before Judge Hilda G. Tagle , set jury selection for 9:00 10/6/03 before Judge Hilda G. Tagle (ogutierrez) (Entered: 01/17/2003)
02/03/2003	<u>12</u>	JOINT DISCOVERY/Case Management Plan by Luis Alejandro Garza, U S A , filed. (ogutierrez) (Entered: 02/04/2003)
07/22/2003	<u>13</u>	Unopposed MOTION for status hearing by U S A, Motion Docket Date 8/11/03 [13-1] motion , filed. (ogutierrez) (Entered: 07/23/2003)
07/22/2003	<u>14</u>	ORDER granting [13-1] motion for status hearing set status conference for 2:00 7/24/03 before Magistrate Judge Felix Recio , , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 07/23/2003)
07/24/2003	<u>15</u>	Minute entry: Status Conference held b/Judge Recio. Apps: Barry Benton f/pltf; Nancy Masso f/Govt. Ct Reporter: Gabriel Mendieta/ERO . Ms. Masso states intents to file a dispositive

		motion within a few days. Counsel further states needing the scheduling dates moved; B Benton addresses the Court. The Court requests parties file a joint proposed order. Present scheduling order held in abeyance. Court adjourned. (ogutierrez) (Entered: 07/28/2003)
07/25/2003	<u>16</u>	NOTICE of submission of parties proposed amended scheduling order by U S A , filed (ogutierrez) (Entered: 07/28/2003)
07/25/2003	<u>17</u>	ORDER reset scheduling order deadlines: Expert witness list submitted by 10/24/03, Dft experts must be named with a report furnished 30 days of the deposition (11/28/03) ; Discovery cutoff 1/31/04 ; Deadline for filing all dispositive motions 3/3/04 ; Pretrial order to be submitted on or before 4/16/04 ; before Magistrate Judge Felix Recio ; , reset docket call for 1:30 5/4/04 before Judge Hilda G. Tagle , reset jury selection for 9:00 5/6/04, ETT 5 days before Judge Hilda G. Tagle , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 07/28/2003)
09/05/2003	<u>18</u>	MOTION to dismiss , alternative for summary judgment by U S A, Motion Docket Date 9/25/03 [18-1] motion, 9/25/03 [18-2] motion , filed. (ogutierrez) (Entered: 09/05/2003)
09/05/2003	<u>19</u>	BRIEF by U S A in support of [18-1] motion to dismiss, [18-2] motion for summary judgment , filed. Exhibits 1 and 2 attached. (ogutierrez) (Entered: 09/05/2003)
09/17/2003	<u>20</u>	Unopposed MOTION to extend time to file response by Luis Alejandro Garza, Motion Docket Date 10/7/03 [20-1] motion , filed. (ogutierrez) (Entered: 09/18/2003)
09/19/2003	<u>21</u>	ORDER granting [20-1] motion to extend time to file response Response to motion reset to 10/15/03 for [18-1] motion to dismiss, reset to 10/15/03 for [18-2] motion for summary judgment , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 09/23/2003)
09/22/2003	<u>22</u>	MOTION for leave to file first amended complaint by Luis Alejandro Garza, Motion Docket Date 10/12/03 [22-1] motion , filed. (ogutierrez) (Entered: 09/24/2003)
10/14/2003	<u>23</u>	RESPONSE by U S A in opposition to [22-1] motion for leave to file first amended complaint , filed (ogutierrez) (Entered: 10/16/2003)

10/14/2003	<u>24</u>	RESPONSE by Luis Alejandro Garza in opposition to [18-1] motion to dismiss, [14-2] relief , filed (ogutierrez) (Entered: 10/16/2003)
11/06/2003	<u>25</u>	ORDER striking [22-1] motion for leave to file first amended complaint , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (ogutierrez) (Entered: 11/07/2003)
11/07/2003	<u>26</u>	MOTION for leave to file First Amended Complaint by Luis Alejandro Garza, Motion Docket Date 11/27/03 [26-1] motion , filed. (ogutierrez) (Entered: 11/07/2003)
11/10/2003	<u>29</u>	ORDER granting [26-1] motion for leave to file first amended complaint , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (mperez) Modified on 02/26/2004 (Entered: 01/12/2004)
12/03/2003	<u>27</u>	NOTICE to the Court of its continued opposition to Plaintiff's Motion for leave to file first amended complaint by U S A , filed (mperez) (Entered: 12/04/2003)
12/16/2003	<u>28</u>	MOTION to compel , and for in camera inspection by Luis Alejandro Garza, Motion Docket Date 1/5/04 [28-1] motion, 1/5/04 [28-2] motion , filed. (mperez) (Entered: 12/18/2003)
01/05/2004	<u>31</u>	NOTICE of submission of documents for in camera inspection by U S A , filed (mperez) (Entered: 01/12/2004)
01/05/2004	<u>32</u>	RESPONSE by U S A to [28-1] motion to compel, [28-2] motion for in camera inspection , filed. (mperez) (Entered: 01/13/2004)
01/08/2004	<u>30</u>	ORDER Motion hearing before Magistrate Judge Felix Recio set for 2:00 1/15/04 for [18-1] motion to dismiss, set for 2:00 1/15/04 for [18-2] motion for summary judgment , entered; Parties notified. (signed by Magistrate Judge Felix Recio) (mperez) (Entered: 01/12/2004)
01/15/2004	<u>33</u>	Motion hearing re: [18-1] motion to dismiss taken under advisement Ct Reporter: D. Ahumada, ERO; B. Benton f/plaintiff; N. Masso f/defendant; The Court addresses counsel stating the motion to dismiss and responses have been reviewed; N. Masso touches on the facts of the case; B. Benton addresses the Court and responds to the Government's arguments; The Court understands the issues and will withhold making a ruling on petitioner's motion to compel; The Court will prepare a Report and Recommendation to Judge Tagle on

		the matter of the motion to dismiss; Court adjourned. (mperez) (Entered: 01/21/2004)
02/20/2004	<u>34</u>	REPORT AND RECOMMENDATIONS of Magistrate Judge Felix Recio Re: [18-2] motion for summary judgment , entered. Parties ntfd. Motion no longer referred Objections to R and R due by 3/1/04 (rpinales) (Entered: 02/20/2004)
02/26/2004		**Terminated document [26-1] motion for leave to file First Amended Complaint (mperez) (Entered: 02/26/2004)
03/01/2004	<u>35</u>	OBJECTION by U S A to [34-1] report and recommendations , filed (rpinales) (Entered: 03/02/2004)
04/15/2004	<u>36</u>	UNOPPOSED MOTION for Suspension of Case Deadlines Set Forth In the July 28, 2003 Amended Scheduling Order by U S A, Motion Docket Date 5/5/04 [36-1] motion , filed. (rpinales) (Entered: 04/16/2004)
04/16/2004	<u>37</u>	ORDER reset docket call for 1:30 5/6/04 before Judge Hilda G. Tagle , and reset pretrial conference for 1:30 5/6/04 before Judge Hilda G. Tagle , and reset jury selection for 9:00 5/10/04 before Judge Hilda G. Tagle , entered; Parties notified. (signed by Judge Hilda G. Tagle) (rpinales) (Entered: 04/16/2004)
04/20/2004	<u>38</u>	ORDER granting [36-1] motion for Suspension of Case Deadlines Set Forth In the July 28, 2003 Amended Scheduling Order , If this case is not disposed of after the Court's review of the Magistrate Judge's Report and Recommendation and objections, the parties will submit a joint proposed amended scheduling order. This proposed amended scheduling order will be filed withing 10 days of the Court's issuance of its decision and order, entered; Parties notified. (signed by Judge Hilda G. Tagle) (rpinales) (Entered: 04/20/2004)
07/23/2004		CASE NO LONGER REFERRED TO Magistrate Judge Felix Recio (dahumada) (Entered: 07/23/2004)
09/28/2004	● <u>39</u>	ORDER BE IT REMEMBERED that on September 28, 2004, the Court considered Defendant's timely objections to the Magistrate Judge's Report and Recommendation, For the reasons that follow, the Court declines to adopt the Magistrates Judge's Report and Recommendation, <u>34</u> Report and Recommendations and Dismisses Plaintiff's complaint. The Court denies as moot all other requested relief.(Signed by Judge Hilda G Tagle) Parties notified.(rpinales,) (Entered: 09/28/2004)

		10/07/2004)
09/29/2004		***Motions terminated: <u>28</u> Motion to Compel, Motion for Miscellaneous Relief, Motion Docket Date, <u>18</u> Motion to Dismiss, Motion for Summary Judgment, Motion Docket Date. Motion 18-1 was granted. Motion 18-2 denied as moot. Motion no. 28-1 denied as moot. Motion no. 28-2 denied as moot. (dahumada,) (Entered: 10/06/2004)
10/12/2004	● <u>40</u>	FINAL JUDGMENT in favor of Defendant and against Plaintiff.(Signed by Judge Hilda G Tagle) Parties notified. (rpinales,) (Entered: 10/13/2004)
10/12/2004		***Case Terminated. (rpinales,) (Entered: 10/13/2004)
11/24/2004	● <u>41</u>	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re <u>40</u> Final Judgment by Luis Alejandro Garza. Filing fee \$ Not Paid, filed. (Attachments: # <u>1</u> Copy of Final Judgment)(rpinales,) (Entered: 11/30/2004)
11/24/2004		***Party U.S. Court of Appeals added. (rpinales,) (Entered: 12/02/2004)
12/01/2004	● <u>43</u>	MOTION/APPLICATION for Leave to Proceed in forma pauperis, MOTION For Items to be Included in the Record on Appeal by Luis Alejandro Garza, filed. Motion Docket Date 12/21/2004. (Attachments: # <u>1</u> Proposed Order)(rpinales,) (Entered: 12/02/2004)
12/02/2004	● <u>42</u>	Transmittal Letter to US Court of Appeals for the Fifth Circuit re <u>41</u> Notice of Appeal. Fee status: not paid, filed. (Attachments: # <u>1</u> Notice of appeal# <u>2</u> Docket Sheet) (rpinales,) (Entered: 12/02/2004)
12/08/2004	● <u>44</u>	First Amended MOTION/APPLICATION for Leave to Proceed in forma pauperisMOTION For Items to be Included in the Record on Appeal by Luis Alejandro Garza, filed. Motion Docket Date 12/28/2004. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Proposed Order)(rpinales,) (Entered: 12/10/2004)
12/17/2004	● <u>45</u>	ORDER denying <u>43</u> First Amended Motion for Items to be Included in the Record on Appeal, granting <u>43</u> First Amended Motion for Leave to Proceed in forma pauperis, mooting <u>44</u> Motion for Items to be Included in Record on appeal, mooting <u>44</u> Motion for Leave to Proceed in forma pauperis.(Signed by Judge Hilda G Tagle) Parties notified.(rpinales,) (Entered: 12/17/2004)

	12/20/2004)
--	-------------